

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

MATTHEW THOMPSON,

Plaintiff,

v.

CONSOLIDATED
CASE NO. 4:14cv465-RH/GRJ

B. SMITH et al.,

Defendants.

_____/

**ORDER FOR ISSUANCE OF WRITS
FOR ATTENDANCE OF WITNESSES**

These consolidated cases are set for pretrial conference on August 4 and for trial on August 21, 2017. The plaintiff did not file a witness list as required. But he indicated at case-management conferences on June 27 and July 12 his intent to call specified witnesses and others whose affidavits he previously submitted. Federal Rule of Civil Procedure 37(c)(1) allows the exclusion of evidence for which a party fails to make timely Rule 26 disclosures but not when the failure is harmless. The plaintiff will be allowed to call witnesses for whom he has disclosed, or promptly discloses, the witness's identity and the subject matter of the witness's

anticipated testimony so long as the anticipated testimony is relevant and otherwise admissible.

The plaintiff has disclosed the identity and anticipated testimony of some witnesses through affidavits previously filed in the case. At the July 12 case-management conference, the plaintiff proffered relevant testimony of two witnesses whose names the plaintiff did not adequately disclose: B. Hall or Nehemiah and Dakota Last Name Unknown. The plaintiff also identified three additional witnesses for whom he did not proffer testimony but from whom the plaintiff said he has obtained but not yet submitted affidavits: Hector Fernandez, Ismael Rios, and Joshua Stone. The plaintiff said he could retrieve the affidavits and mail them to the court by July 19 for filing. Based on the affidavits the plaintiff has filed and the information he has provided at case-management conferences, this order rules preliminarily on the plaintiff's ability to call witnesses.

In addition to himself, the plaintiff may be allowed to call these witnesses: (1) Michael Canty; (2) Yoder Gaien; (3) Raulerson Ezra; (4) Todd L. Mobley; (5) Roger Robson; (6) Israel Ortiz; (7) Winfred Roberts; (8) B. Hall or Nehemiah and Dakota Last Name Unknown, but only if the plaintiff provides the witness's full name before or at the August 4 pretrial conference; and (9) Hector Fernandez, Ismael Rios, and Joshua Stone, but only if the plaintiff files an affidavit or otherwise discloses before or at the August 4 pretrial conference the substance of

the witness's anticipated testimony and that testimony is relevant and otherwise admissible.

Testimony of these witnesses is excluded because the testimony the plaintiff has proffered is irrelevant, properly excluded under Federal Rule of Evidence 403, or otherwise inadmissible: George Powe, Terry Karr, Jonathan Morris, Samuel Velez, William Travis, and Lenoir Torres, and (first name illegible) Perez, Monday DeMarsh, and Jeffrey Elliott. Even if otherwise admissible, the proffered testimony would be of such little probative value as not to warrant issuance of a writ requiring any of these witnesses who are in custody to be transported to the trial.

For these reasons,

IT IS ORDERED:

Writs will be issued for incarcerated witnesses whose testimony this order indicates may be admissible and whose name and facility of incarceration can be identified.

SO ORDERED on July 18, 2017.

s/Robert L. Hinkle
United States District Judge